

Amendment No. 2 to HB1478

Sargent
Signature of Sponsor

AMEND Senate Bill No. 1572

House Bill No. 1478*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 55-10-402, is amended by deleting subdivision (a)(4) and substituting instead the following:

(4) Any person violating § 55-10-401, upon conviction for a fourth or fifth offense, shall be sentenced as a felon to serve not less than one hundred fifty (150) consecutive days nor more than the maximum punishment authorized for the appropriate range of a Class E felony.

(5)

(A) A sixth or subsequent conviction for violating § 55-10-401, or any other applicable prior conviction as described in § 55-10-405(c), is a Class C felony and any person sentenced under this subdivision (a)(5) shall be sentenced to serve no less than the minimum sentence of imprisonment established in subdivision (a)(4) for a fourth offender, and not more than the maximum punishment authorized for the appropriate range of a Class C felony. For this subdivision (a)(5) to be applicable, the person shall:

(i) Have at least five (5) previous convictions for violations of § 55-10-401, or any other applicable prior conviction as described in § 55-10-405(c);

(ii) Commit a sixth or subsequent violation of § 55-10-401; and

(iii) Commit the sixth or subsequent violation on or after July 1, 2016.

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(B) In addition to the required term of imprisonment for a sixth or subsequent offense, all of the collateral consequences of a violation of § 55-10-401, including a fine, forfeiture, driver license suspension or revocation, interlock, transdermal, and other monitoring devices, substance abuse assessments, in-patient or out-patient treatment, drug court or DUI court, and conditions of probation shall also apply to a sixth or subsequent offender.

SECTION 2. Tennessee Code Annotated, Section 40-35-501, is amended by adding the following as a new subsection:

() There shall be no release eligibility for a person committing the offense of carjacking under § 39-13-404, on or after July 1, 2016, until such person has served seventy-five percent (75%) of the sentence imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236 or any other provision of law, shall operate to reduce the sentence imposed by the court by more than fifteen percent (15%).

SECTION 3. Tennessee Code Annotated, Section 55-10-405, is amended by deleting subsections (b) and (c) and substituting instead the following:

(b) If a person is convicted of a violation of § 55-10-401 in this state, for purposes of determining if the person is a multiple offender, the state may use a conviction for an offense committed in another state that would constitute the offense of driving under the influence of an intoxicant under § 55-10-401, vehicular assault under § 39-13-106, aggravated vehicular assault under § 39-13-115, vehicular homicide under §

39-13-213(a)(2), or aggravated vehicular homicide under § 39-13-218, if committed in this state. If an offense in a jurisdiction other than this state is not identified as one (1) of the offenses named in this subsection (b), it shall be considered a prior conviction if the elements of the offense are the same as the elements of the comparable offense in this state.

(c) For purposes of determining if a person convicted of a violation of § 55-10-401 is a multiple offender, a prior conviction for vehicular assault under § 39-13-106, aggravated vehicular assault under § 39-13-115, vehicular homicide under § 39-13-213(a)(2), or aggravated vehicular homicide under § 39-13-218 shall be treated the same as a prior conviction for driving under the influence of an intoxicant under § 55-10-401. Provided, the person was convicted of the prior offense before committing the instant violation of § 55-10-401.

SECTION 4. Tennessee Code Annotated, Section 40-11-118, is amended by deleting subdivision (d)(1) and substituting instead the following:

(1) When the court is determining the amount and conditions of bail to be imposed upon a defendant, if the defendant is charged with a violation of § 55-10-401, and has one (1) or more prior convictions for the offense of driving under the influence of an intoxicant under § 55-10-401, vehicular assault under § 39-13-106, aggravated vehicular assault under § 39-13-115, vehicular homicide under § 39-13-213(a)(2), aggravated vehicular homicide under § 39-13-218, or a prior conviction in another state that qualifies under § 55-10-405(b), the court shall consider the use of special conditions for the defendant, including, but not limited to, the conditions set out in subdivision (d)(2).

SECTION 5. Tennessee Code Annotated, Section 40-11-148, is amended by deleting subdivision (b)(1) and substituting instead the following:

(1) When the court is determining the amount and conditions of bail to be imposed upon a defendant who is charged with driving under the influence of an

intoxicant under § 55-10-401, vehicular assault under § 39-13-106, aggravated vehicular assault under § 39-13-115, vehicular homicide under § 39-13-213(a)(2), or aggravated vehicular homicide under § 39-13-218, the court shall consider the use of special conditions for such defendant, including, but not limited to, the conditions set out in subdivision (b)(2), if the offense for which bail is being set was committed while the defendant was released on bail for a prior charge of violating any offense listed in this subdivision (b)(1).

SECTION 6. Tennessee Code Annotated, Section 55-10-406, is amended by deleting the final sentence of subsection (a) and substituting instead the following:

However, no such test or tests may be administered pursuant to this section unless conducted at the direction of a law enforcement officer having probable cause to believe the person was driving while under the influence of any intoxicant, controlled substance, controlled substance analogue, drug, substance affecting the central nervous system, or combination thereof as prohibited by § 55-10-401, or committing the offense of vehicular assault under § 39-13-106, aggravated vehicular assault under § 39-13-115, vehicular homicide under § 39-13-213(a)(2), or aggravated vehicular homicide under § 39-13-218.

SECTION 7. Tennessee Code Annotated, Section 55-10-407, is amended by deleting subdivision (f)(3) and substituting instead the following:

(3) For the purpose of determining the license suspension period under subsection (a), a prior conviction for the offense of vehicular assault under § 39-13-106, aggravated vehicular assault under § 39-13-115, vehicular homicide under § 39-13-213(a)(2), or aggravated vehicular homicide under § 39-13-218, shall be treated the same as a prior conviction for a violation of driving under the influence of an intoxicant under § 55-10-401.

SECTION 8. Tennessee Code Annotated, Section 55-10-409, is amended by deleting subdivision (a)(1) and substituting instead the following:

(1) Has a prior conviction for the offense of driving under the influence of an intoxicant under § 55-10-401, vehicular assault under § 39-13-106, aggravated vehicular assault under § 39-13-115, vehicular homicide under § 39-13-213(a)(2), or aggravated vehicular homicide under § 39-13-218, in this state or a similar offense in another state; or

SECTION 9. Tennessee Code Annotated, Section 55-10-411, is amended by deleting subdivision (b)(2) and substituting instead the following:

(2) In the prosecution of second or subsequent offenders, the indictment or charging instrument must allege the prior conviction or convictions for a violation of driving under the influence of an intoxicant under § 55-10-401, vehicular assault under § 39-13-106, aggravated vehicular assault under § 39-13-115, vehicular homicide under § 39-13-213(a)(2), or aggravated vehicular homicide under § 39-13-218, setting forth the time and place of each prior conviction or convictions. When the state uses a conviction for the offense of driving under the influence of an intoxicant, aggravated vehicular homicide, vehicular homicide, aggravated vehicular assault, vehicular assault, or adult driving while impaired committed in another state for the purpose of enhancing the punishment for a violation of § 55-10-401, the indictment or charging instrument must allege the time, place, and state of the prior conviction.

SECTION 10. Tennessee Code Annotated, Section 55-10-413, is amended by deleting subdivision (f)(1) and substituting instead the following:

(1) In addition to all other fines, fees, costs, and punishments now prescribed by law, including the fee imposed pursuant to subsection (d), a blood alcohol or drug concentration test (BADT) fee in the amount of two hundred fifty dollars (\$250) shall be assessed upon a conviction for driving under the influence of an intoxicant under § 55-

10-401, vehicular assault under § 39-13-106, aggravated vehicular assault under § 39-13-115, vehicular homicide under § 39-13-213(a)(2), or aggravated vehicular homicide under § 39-13-218, for each offender who has taken a breath alcohol test on an evidential breath testing unit provided, maintained, and administered by a law enforcement agency for the purpose of determining the breath alcohol content or has submitted to a chemical test to determine the alcohol or drug content of the blood or urine.

SECTION 11. Tennessee Code Annotated, Section 55-50-502, is amended by deleting subdivision (c)(3)(B)(i) and substituting instead:

(i) Based upon the records of the department of safety the person does not have a prior conviction for a violation of driving under the influence of an intoxicant under § 55-10-401, vehicular assault under § 39-13-106, aggravated vehicular assault under § 39-13-115, vehicular homicide under § 39-13-213(a)(2), or aggravated vehicular homicide under § 39-13-218, or, if the conviction occurs in another state, does not constitute a prior conviction pursuant to § 55-10-405(b).

SECTION 12. Tennessee Code Annotated, Section 39-17-418, is amended by deleting subdivision (c)(1) and substituting instead the following:

(1) Except as provided in subsection (d), a violation of this section is a Class A misdemeanor.

SECTION 13. Tennessee Code Annotated, Section 39-17-418, is amended by deleting subsection (e) in its entirety.

SECTION 14. Tennessee Code Annotated, Section 39-17-428, is amended by deleting subdivisions (b)(3) and (b)(6) and substituting instead the following:

(3) Third or subsequent conviction for a misdemeanor drug offense involving a Schedule VI controlled substance classified as marijuana or hashish 1,000

(6) Third or subsequent conviction for a misdemeanor drug offense involving a scheduled controlled substance other than Schedule VI 1,000

SECTION 15. Tennessee Code Annotated, Section 55-10-402, is amended by deleting subdivision (a)(1)(A) and (a)(1)(B) and substituting instead the following:

(A) Any person violating § 55-10-401, shall, upon conviction for the first offense, be sentenced to serve in the county jail or workhouse not less than forty-eight (48) consecutive hours nor more than eleven (11) months and twenty-nine (29) days.

(B) Any person violating § 55-10-401, upon conviction for the first offense with a blood alcohol concentration of twenty-hundredths of one percent (0.20%) or more, shall serve a minimum of seven (7) consecutive days rather than forty-eight (48) hours.

SECTION 16. Tennessee Code Annotated, Section 55-10-420, is amended by deleting the section in its entirety.

SECTION 17. Tennessee Code Annotated, Section 55-10-418, is amended by deleting subsection (e) and redesignating accordingly.

SECTION 18. This act shall take effect July 1, 2016, the public welfare requiring it.